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To cite this article: Blas Radi (2020) Reproductive injustice, trans rights, and eugenics, Sexual and Reproductive Health Matters, 28:1, 1824318, DOI: [10.1080/26410397.2020.1824318](https://doi.org/10.1080/26410397.2020.1824318)

To link to this article: <https://doi.org/10.1080/26410397.2020.1824318>



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Published online: 15 Oct 2020.



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Reproductive injustice, trans rights, and eugenics

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Abstract: *This article explores how the recognition of the gender identity of trans people can have negative consequences on their reproductive health and rights. First, it argues that, while both the right to gender identity and the right to sexual and reproductive health are part of the indivisible core of human rights, in practice trans people are forced to choose between them. Understanding this scenario requires focusing on the eugenic dimensions of trans policies, even in states where the recognition of a gender identity other than that assigned at birth is not tied to surgical or hormonal compromises. The concept of “passive eugenics”, coined over twenty years ago by James Bowman, offers a valuable key in this respect. Second, the paper highlights some factors that hinder a successful approach to the reproductive health and rights of trans people. These factors include: the normative imageries about the reproductive capacities and desires of trans people, representations about pregnancy and “womanhood”, and the form taken by identity politics in contemporary feminist movements. The attention given as a priority (if not exclusively) to initiatives for the legalisation of voluntary abortion, understood as a right pertaining to (cis) women, offers a significant example of these difficulties. Finally, the paper advocates the adoption of a reproductive justice approach to work on sexual and reproductive health and rights, arguing that it has, among other virtues, that of challenging the binary matrix that characterises Western thought.* DOI: 10.1080/26410397.2020.1824318

Keywords: trans health, reproductive justice, abortion, passive eugenics, gender identity

Introduction

The aim of this article is to demonstrate that although both the right to gender identity and the right to sexual and reproductive health are human rights – and, as such, are part of the indivisible core of rights that a person should have – in practice, trans people (i.e. people who identify with a gender other than the one assigned at birth) are forced to choose between them. These scenarios require looking into the eugenic dimension of trans policies even in states where the recognition of a gender identity other than that assigned at birth is not tied to surgical or hormonal compromises. Here, the Argentinian case, which will be the main focus of the paper, is particularly salient, given the progressive nature of its normative framework on gender identity.

Unlike other eugenic policies, the policies in Argentina do not aim to decrease the proportion of people with certain traits among the population (as if transness were hereditary), but to maintain gender order: women have the capacity to gestate,

men to produce sperm. This is not a new phenomenon, for example, the Terman-Miles M-F Test is an example of attempts to maintain gendered order that can be counted among the ordinary eugenics of the twentieth century.^{1–3} I here follow the concept of “passive eugenics” as coined by Bowman,⁴ who introduces the distinction between “active eugenics” and “passive eugenics”. The first category applies to policies that encourage or discourage reproduction among certain populations. The second applies to policies that, while not openly aimed at discouragement, have the same effect, such as “the denial of adequate health care ... , the social neglect of vaccination programs ... , the voting against child welfare by ... anti-choice activists”.⁴ According to Bowman, these all reflect societal hypocrisy about [the consequences of] a health care system that is inferior to that of all major industrialised countries, even though politicians and corporate czars in our health care and insurance industries equivocate in proclaiming that our health care system is the best in the

world. Such proclamations need to be challenged since, as Bowman warns, “a society that accepts passive eugenics provides fertile ground for both clandestine and overt active eugenics”.⁴ Building on Nixon’s work,⁵ this paper will look into the forms of passive eugenics endorsed and reinforced by contemporary social movements advocating the legalisation of voluntary abortion.

Additionally, some factors are highlighted that hinder an adequate approach to trans people’s reproductive health and rights. The first concerns normative thinking about the reproductive capacities and desires of trans people, and about pregnancy and “womanhood”. The second refers to the strong investment in identity politics maintained by progressive social movements around sexual and reproductive health and rights. At least in its contemporary expressions, identity politics prioritises (if not exclusively focuses on) initiatives such as promoting the legalisation of voluntary abortion, understood as a right of (cis) women. Given the recent parliamentary treatment of the legalisation of voluntary abortion in Argentina, the considerations in this paper will be applied to the Argentinian context. The concept of “gender identity”, which will be deployed in the terms of *The Yogyakarta Principles* (2007), is central to this exercise. The definition provided by the Principles challenges old conceptions anchored in gender and sexual difference binaries and evidences the need to reconfigure our institutions and our political imagination.⁶

This article advocates the adoption of a reproductive justice approach to work on sexual and reproductive health and rights. The approach has the virtue of integrating reproductive health into social justice, by taking as its basis the theories of intersectionality⁷ and the universality and indivisibility of human rights, consequently challenging the binary matrix that characterises Western thought. Hence, it offers a new look that dismantles the false dichotomies present in contemporary debates on sexual and reproductive health and rights.

False dichotomies are verbal manoeuvres that reduce multiple options to two and present them as contradictory, thus forcing a choice between them. Although such dichotomies are logically flawed, they tend to be psychologically persuasive. Avoiding their traps will allow us to “imagin[e] better futures through radical forms of resistance and criticism”⁸ – futures in which trans people do not have to choose between their human rights.

Finally, it should be noted that the analysis that follows does not include trans women, nor does it make explicit references to intersex people. This is due, firstly, to the fact that, to date, the political agenda of trans women in Argentina has not centred issues related to trans pregnancy and reproductive rights. This does not mean, of course, that they do not have family planning needs nor that activism on these topics is not relevant or does not exist, but rather that historical and circumstantial reasons have led the agenda along other paths. Secondly, although the challenges and debates faced by intersex people have tended to be wrongly equated with those encountered by trans endosex people, there are substantial differences which call for specific work that is currently being pursued by highly qualified intersex scholars.

Eugenics is said in many ways

The etymological meaning of the term “eugenics” might seem harmless were it not for its historical connotations, which link it to programmes of selective breeding, medical experimentation, and death camps. While the imaginaries surrounding these terms refer us directly to the Holocaust, the eugenic impulse can be traced even further back. Within the European context, eugenic ideas can be found in ancient times, such as in classical Greek literature.^{4,9,10} Perhaps one of the most prominent examples in this respect is Plato’s *Republic*, where the philosopher recommends methods to improve the genetic constitution of the elite class and establishes an analogy with the selective breeding of non-human animals in order to obtain the desired stock.

In its modern version, eugenics was developed by scientist Francis Galton, who was interested in creating “better human beings” through the scientific management of mating, “a preferable alternative to natural selection among humans”.¹¹ In his words, eugenics was

“the science of improving stock, which is by no means confined to questions of judicious mating, but which, especially in the case of man, takes cognisance of all influences that tend in however remote a degree to give to the more suitable races or strains of blood a better chance of prevailing speedily over the less suitable than they otherwise would have had”.¹²

Galton's ideas had a significant impact in the first part of the twentieth century, and often resulted in genetic engineering health projects interested in "improving" humanity. The idea of breeding desirable persons or traits was translated, in its positive version, into political programmes that provided monetary incentives and stipends to favour the reproduction of certain types of people. In its negative version, eugenics took the form of programmes for racial purification through the forced sterilisations of persons deemed unfit to reproduce. Negative eugenics primarily targeted people with mental illness, poor people and people of colour, and sought to prevent their genes from "polluting" the gene pool. Additionally, in a context where criminality was seen as a hereditary biological problem, sterilisation was considered a "more humane" way to prevent the reproduction of "degenerates", who would inevitably engage in corrupt, immoral and vicious activity.²

For trans people in many countries, the resignation of their reproductive capacities has been, and still is, a condition to access the legal recognition of gender identity. In some cases, forced sterilisation can be a result of the requirements established by legislation or the court, even when it is not openly stipulated in the text of the law. Lowik³ has shown how cisnormativity and the "best interests of the child" play a determining role in establishing these eugenic requirements. The requirements include, for example, an "adjustment of sexual characteristics by means of medical-surgical treatment previously authorized by the courts";¹³ accreditation of at least two years of hormonal treatment "to accommodate the physical characteristics of the claimed sex";¹⁴ or the "removal of sexual organs and mammary glands for trans men and the removal of sexual organs (testicles and penis) for trans women".¹⁵ In other cases, the legislation is more explicit and requires the person requesting the change to certify that they are "no longer capable of producing children with their previous gender";¹⁶ that they are "definitely incapable of procreation" – if her birth certificate recognises her as a woman – or "definitely incapable of giving birth" – if he will be recognised as a man;¹⁷ that they are "sterile or incapable of reproduction";¹⁸ ...) or have "no reproductive glands or their function has been permanently lost".¹⁹

The initiatives against the eugenics programme that these requirements put in place have brought together researchers and activists across the world.

The Transgender Europe (TGEU) network, for instance, produces annual reports on the legal situation of trans people in all 47 Council of Europe member States (and, more recently, in five Central Asian countries as well). These reports include a detailed index by country and a map that distinguishes states that do not "have a legal gender recognition procedure in place" from those that do, and within the latter identifies legal systems in which trans people must undergo a sterilisation procedure before changing their registration data. A comparative analysis of the maps produced with a difference of only four years shows that in 2016, 23 European countries allowed for legal gender recognition but required "that trans people undergo mandatory sterilisation before changing their gender marker",²⁰ whereas in 2020 only 12 did so.²¹ However, this decrease in the number of countries which required sterilisation procedures is not demonstrative of eugenic ideologies and policies ending in these countries writ large.

The current state of eugenics

The Argentinian Gender Identity Law is recognised worldwide for its progressive nature. The law, enacted in 2012, does not tie the recognition of gender identity to any bodily modification and therefore does not require people to give up their reproductive capacities. In its second article, the law adopts the definition of "gender identity" provided by the Yogyakarta Principles (2007) and states:

"Gender identity is understood as the internal and individual experience of gender as each person feels it, which may or may not correspond to the sex assigned at birth, including the personal experience of the body. This may involve modification of the appearance or function of the body through pharmacological, surgical, or other means, if freely chosen. It also includes other gender expressions such as clothing, speech, and manners." (Ley No 26)

In these terms, the law establishes an administrative mechanism to modify data in identity documents, emphasising self-determination and not requiring diagnostic accreditation, body examinations, or surgical commitments. Correspondingly, Argentina does not require forced sterilisation as a condition for recognition of a gender identity other than that assigned at birth.

It is important to note that Argentinian legislation does not determine a repertoire of available identity categories. Precisely because it

understands that gender is a subjective experience, it leaves this definition to the experience of each person. Under these circumstances, for example, in November 2018, the Civil Registry of the province of Mendoza proceeded to rectify a person's registration by leaving the field "sex" blank on their birth certificate.²²

This is key when considering issues of sexual health and sexual and reproductive rights, because it implies that Argentina recognises with the force of the law the existence of women who produce sperm, men with childbearing potential, and people who do not identify as either men or women and who also retain their reproductive capacities. Does this law put an end to trans eugenics in Argentina? I look at this in more detail.

Given the tradition that used to govern the processes of modifying registry data in the courts (that is, before 2012), the value of the Gender Identity Law tends to be weighted not only in terms of what it does, but also in terms of what it prevents. Moira²³ has shown how, to this effect, the Law works as a hinge that distributes, in a differential way, the positive and negative aspects of a story of linear progress.^{23,24} While evil is assigned to the past – the moment before the law – good is inaugurated by it. The temporal Manichaeism that organises this narrative sequence inclines us to think of eugenics, along with judicialisation and pathologisation, as problems of the past. However, these accounts hinder a political reading that is sensitive, for example, to the injustices that the law inaugurates or to those that it does not dismantle²⁴ – eugenics among them. Discourses that locate all problems in the past, together with the choice of certain (agents and) events as milestones,²³ instead of observing complex processes on a large scale, fail to note the ways in which "contemporary injustice often manifests itself in the form of structural repetition or the continuity of injustices with a long history".²⁵

So, rather than declaring victory, it should be noted that withdrawing the requirements of forced sterilisation is not equivalent to developing policies for fertility preservation and family planning. In fact, since the passage of the Gender Identity Law, the sexual and reproductive health of the trans population has hardly been a priority and has not been comprehensively integrated into state policies.

In Argentina, to date, no new programmes have been developed in these areas, nor has there been a revision of existing ones, which were largely

designed by and for cis women. On the other hand, although the Gender Identity Law guarantees access to "integral health", it is necessary to point out that the health-related aspects of the law were the last to be regulated (three years after the rest) and had no budget assigned. Additionally, the belated regulation made no reference to sexual and reproductive health, but only to "total and partial surgical interventions and/or integral hormonal treatments to adapt their bodies, including their genitals, to their self-perceived gender identity".²⁶

The primary objective of these policies (or absence thereof) is not to prevent or discourage the reproduction of trans people. However, this is one of the results. The lack of policies towards the preservation of fertility and – more generally – the lack of adequate healthcare policies is an example of what Bowman calls "passive eugenics".⁴

The United Kingdom (UK) offers a good example of how existing policies – and not their absence – aim at sterilising trans people. In the UK, trans people have never been legally required to renounce their reproductive abilities. However, its health system discourages reproduction and encourages the practices of removing the uterus, ovaries, and fallopian tubes. Reproduction is discouraged on medical grounds, albeit with very weak clinical evidence.^{27–29}

The eugenic residue in these two cases – existing policies, as in the UK, or the lack thereof, as in Argentina – may go unnoticed by those who focus more on the intent of legislation and public policy than on their effective impact. If we focus instead on what law does rather than on what it says it does,³⁰ that is, if we consider the dimension of its effects, its eugenic component becomes undeniable.

Reproductive and non-reproductive subjects

The obstacles that prevent trans people from exercising their sexual and reproductive rights are not only found in their legal regulation, but also in the cultural articulation of such rights. Collective imaginaries about reproduction are governed by a series of myths about gender, its roles, desires, and bodies. This political mythology is not only internalised and (re)produced by individuals, but also by institutions. This is in large part due to the articulation between medicine and justice,

and the commitment of both to sexual difference and the gender binary. In this cultural framework, trans people and the ability to reproduce are presented as mutually exclusive. The metaphors of the “wrong body”, “gender dysphoria”, the “voluntary” renunciation of the ability to procreate, and “heterosexuality”, form the basis of the idea that conceives trans people as a sterile population, without reproductive will or fertile sexual practices.^{31–34} To a large extent, trans individuals and activism took ownership of these representations³⁵ because this maximised opportunities to access surgical and registration changes.^{31,32,36} This has allowed for an eugenic social atmosphere that becomes independent from positive and/or legislative eugenic measures.

Thus, even though we have witnessed the development of new technologies that challenge our beliefs about human reproduction, the latter seems to remain within an exclusively cis domain. These beliefs are crystallised in representations about pregnancy, which our culture recognises and represents as a process unique and quintessential to (cis) women and, although it is a temporary experience, pregnancy ceases to be a “condition” and becomes an identity.³⁷ In this manner, women’s identity as such depends on pregnancy and their bodies are represented as if they were expecting babies.³⁸ In other words, it is understood that pregnancy is an experience unique to women and that women are women because they get pregnant – a feedback loop that keeps the gears of the repronormative order in motion.³⁹

The combination of these semantic regimes (the one that makes trans people irreproducible and the one that makes pregnancy synonymous with a woman’s identity) results in turning a pregnant man into an oxymoron.⁴⁰ The figure of the pregnant trans man challenges gender assumptions in such a profound way that he becomes imperceptible: he can only be seen as an overweight man.^{37,41} A simplified scheme of the socially available representations can be organised through the following negative theses: (1) trans pregnancy is illegal; (2) if it is not illegal, it is unviable; and (3). if it is viable, it is invisible. Even when visible, trans pregnancy is represented as the first and only one, as insightfully shown by Pearce and White.⁴² From this perspective, it makes sense to doubt the need to develop sexual and reproductive health policies for this population. Are there any alternatives?

With a critical perspective, (lesbian) feminist theorists and activists have questioned the heterosexual economy that makes (cis) *women* the forced reproducers of the species.^{43,44} Their incisive developments on abortion and contraception cut across the normative fantasy that fuses sex and reproduction, enabling (cis) *women* to avoid the role socially imposed to them. “Woman is not synonymous with mother,” the feminist motto goes. However, given feminism’s ontological dependence on sexual difference,^{45,63} it often seems that to bear children – and/or to refuse to do so – one must necessarily be a woman. That is why sexual and reproductive rights claims adopt identity strategies that formulate their demands in terms of “women’s rights”. Anna Weissman has pointed out that “*by determining who is considered illegitimate to reproduce, there is a reification of who can (and must) produce*”⁴⁶ and, conversely, establishing who can reproduce defines who should not. What is most striking in the case under analysis here, however, is that it is the same movement that seeks to denaturalise the role of (cis) women as mothers and oppose repronormative discourses, that reinscribes them in the very act of opposing them.⁴⁷

On rights and the subjects of rights

Defining the subject of feminism has not been without tension. Asking who the subjects of feminism are is not only asking who the spokespersons of the movement are, but according to which urgencies (that is: *whose* urgencies) demands are defined. The controversies surrounding the domain of the term “woman” (who are women?) and the universe of discourse of the subjects of sexual and reproductive rights (e.g. who are the subjects of pregnancy and abortion) are also determining factors in the definition of the agenda and the political subject of feminism.

The sexual and reproductive rights movement is often presented as a great step forward in the history of women’s rights. While these movements have undoubtedly been advantageous, it may be useful to make some clarifications about which rights and which women are reached by such initiatives.

According to the International Conference on Population and Development Report (1994),⁶⁴ sexual and reproductive health is a state of physical, mental, and social well-being in all matters relating to sexuality and the reproductive system. Good sexual and reproductive

health, then, implies that people have a satisfying and safe sex life; the ability to reproduce and the freedom to decide if, when, how often, and under what circumstances to do so; and the information and means to do so without discrimination or violence.

In line with this characterisation, the catalogue of sexual and reproductive rights is not reduced to the right to voluntary termination of pregnancy. In any case, abortion has typically been the more privileged focus of right-to-choose initiatives. Movements with intersectional agendas, on the other hand, have historically questioned this reduction.

In “Racism, Birth Control and Reproductive Rights”, Angela Davis⁴⁸ observes how reproductive rights agendas are marked by class, race, and nationality biases. According to her, white and bourgeois women at the beginning of the twentieth century could see in the right to birth control the possibility of planning their pregnancies and advancing in their professional development. But this, which for privileged women can be interpreted as a right, is not so for women of colour, migrant women, and poor women. Davis points out that for them, birth control represents a racist imperative that translates into a moral obligation to reduce the size of their families (due to their living conditions) and into state programmes of extermination. Examples of such eugenic programmes abound even in our times, showing how for some subjects the social regulation of their reproductive life has been a central aspect of racial oppression.⁴⁹ The birth control policy implemented in Peru during the Fujimori government, for instance, resulted in the sterilisation of more than 310,000 low-income Quechua, Aymara, Shipiba and Ashaninka women.⁵⁰ The same can be said of the policies of socialist Czechoslovakia, aimed at reducing the birth rate of the Roma population, including, among other things, programmes of free hormonal contraception, permission to abort, and inducement to sterilisation through financial rewards and other persuasion strategies implemented by social workers.⁵¹ In short, if we begin to see beyond the universalised idea of “women”, things become ever more complex.

Us or them: a false dilemma

In Argentina, the recent Parliamentary debate on the legalisation of voluntary termination of

pregnancy led to discussions about who are the subjects with the capacity to gestate, who are the subjects of rights, and who are allies. These discussions might have gone unnoticed for those who considered that the only ongoing debate was that of people against the legalisation of abortion vs. people who supported it. A careful consideration of the nuances within the debate over the legalisation of abortion, however, suggests that another underlying debate was simultaneously occurring, and shows how assumptions about the pregnant, abortion-seeking person were prevalent on all sides of the legalisation debate.

Although they had conflicting objectives, both the initiatives of the more conservative sectors against legalisation and the legal strategies of the social movements for legalisation of voluntary abortion assumed that all people with the capacity to carry a pregnancy – and therefore to have an abortion – are women. Moreover, organisations bearing greenbandanas (the symbol chosen by the movement seeking legalisation) defended this and placed their demands in the coordinates of (cis) women’s human rights focusing on the dignity, full authority, capacity, and right of (cis) women to decide for themselves and their bodies.

Trans men highlighted that the category “women” does not fully coincide with that of “people who can become pregnant”: on the one hand, because there are women who cannot become pregnant, on the other, because there are people who are not women who in fact become pregnant and have abortions – as is the case with some non-binary people and trans men. These discussions have a long history in Argentina. They started well before the passing of the Gender Identity Law, in a context where non-binary identities were not yet visible in the public sphere as they are now. “*Travesti*” identity (in Argentina, referring to people assigned male at birth) may be considered a non-binary identity in an analytical sense, however, insofar as *travestis* do not consider themselves either female or male, it is also true that they do not identify as “non-binary” and this group is beyond the scope of the analysis here. Also, although ongoing demands by trans masculine activists soon incorporated into their speech the sense of a diverse community (referring to people assigned female at birth (AFAB) or “people with the capacity to carry a pregnancy”, for example), this acknowledgement was mostly ignored by cis feminist activists participating in the conversations referred to here.

In any case, attempts to enable these conversations and the possibilities for articulation with organisations and activists working towards the legalisation of abortion was met with enormous resistance: “Women decide, men accompany” became a *shibboleth*, a password – unsayable for trans men – that served the purpose of distinguishing friends from foes. As explained in previous sections, movements seeking to undo the reifying ties between womanhood and reproduction effectively contributed to eugenic understandings – and, potentially, their resulting policies – of who has no place in reproduction.

Some green bandana organisations argued that the demands by trans men were too novel, that trans men were too few in number and/or had not been involved in the political process in favour of legalising abortion, that they could harm the legislative debate, and – above all – that they wanted to harm women.^{34,52,53} Under these terms, any alliance with trans men was presented as, at best, unstrategic, or, at worst, a threat that had to be resisted. At times, the discussion looked very much like a dilemma: the defence of (cis) women’s rights and the defence of trans men’s rights were presented as mutually exclusive options. Running over trans men’s rights appeared to be an undesirable but necessary consequence of claiming women’s rights. In other words, the chosen way to counter repronormative discourses affecting (cis) women seemed to necessarily involve fuelling repronormative (eugenic) discourses affecting trans men.

Of the various bills discussed in the National Congress, only one considered “all persons” as subjects of rights.⁵⁴ The rest referred strictly to (cis) women and, in some cases, in an additional article⁵⁵ or in its rationale⁵⁶ extended its reach to other persons with capacity to gestate, in accordance with the Gender Identity Law. Finally, the opinion adopted by the plenary of Deputies introduced the formula “woman or pregnant person” in all articles. The change in vocabulary, however, was not an expression of a change in the criteria for political participation or in the movement’s agenda. On the contrary, in Argentina political correctness in language (such as the use of “inclusive” or “gender-neutral” language) often works as a means to rule out any opportunity for change looking towards effective participation. In this case, the addition of the term “pregnant person” to the project did not mean that the doors to dialogue and collective work were opened,³⁴ nor did it involve

a review of reproductive health initiatives, policies and rights. The guidelines currently in force for cases where abortion is already legal, developed by the Ministry of Health, continue to be aimed exclusively at cis population. The Protocol for the Comprehensive Care of Persons Entitled to the Legal Termination of Pregnancy, updated in 2019, recognizes the existence of trans people AFAB but “for the purpose of facilitating reading” chooses not to refer to them throughout the document.⁵⁸ Meanwhile, although the current official guidelines for contraceptive methods refers to “trans gender identity”, it is built on a cisnormative framework, distinguishing, for instance, between “the physiology of sexual organs of woman and man”.⁵⁷

It is interesting to analyse the role that progressive measures actually play in this scenario. It is often the case that, far from being an indicator of best practices, they are a serious and hardly visible obstacle to their development and effective implementation. Apart from the use of “politically correct formulas” to refer to the subject of abortion, described above, this is also often the case with the use of “inclusive language” and even with appeals to the Gender Identity Law, which tend to work rhetorically as a proof of measures that have not been taken. For example, in recent research by the Gender and Politics Project in Latin America, the Argentina report included the Gender Identity Law as a part of the legal framework on sexual and reproductive rights for trans populations. While the Argentinian Gender Identity Law is exemplary in many respects and bans forced sterilisation, it includes no other reference to sexual and reproductive rights, simply because this is beyond its intended scope. The cost of pretending that these rights are covered (in this case, by citing laws that do not refer to them) is, once again, paid by trans people who find neither the needed access to such policies, nor the adequate political spaces to expose and address this lack. Thus, by hiding the ways in which trans subjects are excluded from public policies related to sexual and reproductive health, or by invoking them at a mere rhetorical level, these dynamics are in solidarity with passive eugenics. By presenting existing measures and policies as inclusive, the problems faced by trans people in relation to reproduction are made invisible and even unintelligible. Therefore, while preserving a progressive image, these discourses contribute to an order in which, although there are no policies that explicitly and

actively discourage or disable trans reproduction, the absence of concrete policies has an analogous effect.

Towards reproductive justice

The identity-based commitments of sexual and reproductive rights activism in Argentina translated into a liberal agenda focused on abortion and cis women. Given the enormous prevalence of this type of approach in our country and in the region, at times it may be difficult to consider addressing these issues from other conceptual frameworks. With the intention of dismantling this resistance, this section offers some proposals framed in the paradigm of reproductive justice, with the aim of settling several of the problems analysed above.

Reproductive justice emerged from the experiences of Black women as subjugated knowledge, that is, knowledge that was excluded by the dominant movement for the legalisation of abortion. The concept of “reproductive justice” was coined in 1994 to shed light on the forms of intersectional oppression that threaten the bodily integrity of Black women.^{8,59,60} According to Loreta Ross,

“We created ‘reproductive justice’ because we believed that true health care for women needed to include a full range of reproductive health services. While abortion is one primary health issue, we knew that abortion advocacy alone inadequately addressed the intersectional oppressions of white supremacy, misogyny, and neoliberalism. From the perspective of African American women, any health care plan must include coverage for abortions, contraceptives, well-woman preventive care, pre- and postnatal care, fibroids, infertility, cervical and breast cancer, infant and maternal morbidity and mortality, intimate partner violence, HIV/AIDS, and other sexually transmitted infections.”⁸

Intersectionality allows the reproductive justice approach to avoid the dead ends of current identity politics approaches and to conceptualise heterogeneous identities as crossroads of complex webs of belonging.^{7,61} The intersectional approach was developed by Kimberlé Crenshaw as a critique of movements that seek social change from a single angle. Its theoretical commitment means that “women’s” identity is not the only relevant factor in shaping political movements and defining the subjects of rights. This is not only a political gain (as “it attends to the specific needs of the

different groups involved”), but also “reinforces the epistemological proposal itself: it ensures a more responsible, sophisticated and realistic knowledge of the phenomena we are dealing with”.⁶¹

In fact, movements for reproductive justice are openly hospitable to trans people. This means that their analysis of the political scenarios of discussions of sexual and reproductive health and rights is not reduced to the struggle between activists in favour and activists against the legalisation of abortion, but offers a new viewpoint that dismantles the false dichotomies present in contemporary debates.

This mindset understands that systemic inequality has always influenced people’s decisions about childbearing and the upbringing of their children. Consequently, it addresses the various forces that influence the social places individuals occupy in society and their individual freedoms (forces such as racism, sexism, poverty, ableism, sexual orientation, and age). For this reason, its activists understand that advocating reproductive justice does not stop at the right to abortion, access to contraceptives, or even at respectful childbirth, but also – and above all – entail dismantling social and health inequalities throughout the life cycle. This implies working on all public policies, considering the different aspects that affect reproduction and the upbringing of children. It includes:

“freedom of movement, immigration restrictions, the prison-industrial complex, racial and gender binaries, racial profiling and police brutality, racist and sexist media portrayals, resource allocations through tax policies, welfare and public assistance, health care systems, insurance affordability, housing availability, eviction policies, food insecurity, educational opportunities, zoning regulations, public utilities, internal displacement through natural disasters or eminent domain, voting rights, religious bigotry, credit, finance regulations, civil liberties restrictions, and environmental racism.”⁸

Regulations that dictate who can and should have children and under what conditions are ways of exercising power over all communities. This exercise disproportionately punishes the most vulnerable people: people of colour, migrants, people with disabilities, trans people, among others. While contemporary expressions of identity politics tend to benefit the economic and racial interests of hegemonic groups, the model of reproductive justice, and its particular

way of engaging with the promotion and protection of sexual and reproductive rights, allows for “imagining better futures through radical forms of resistance and criticism”.⁸

Conclusion

The first and second sections of this paper describe the legal, political, and cultural obstacles that prevent trans people from exercising their reproductive rights. Social awareness of these problems is growing and requires an uptake that is up to the challenge. To this end, the third section presents the reproductive justice approach, which can provide access points in order to think about gender and reproduction in ways that do not force trans

people to choose between their right to gender identity and their reproductive rights.

Acknowledgements

I am grateful to two anonymous reviewers from this Journal, as well as Mauro Cabral, Marina Elichiry, Francis Fabre and the members of the Contingencia Research Group at the Argentinian Society of Philosophical Analysis (SADAF), for their valuable contributions in shaping this article.

Disclosure statement

No potential conflict of interest was reported by the authors.

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Résumé

Cet article examine comment la reconnaissance de l'identité de genre des personnes transsexuelles peut avoir des conséquences négatives sur leur santé et leurs droits reproductifs. Premièrement, il avance que, si le droit à l'identité de genre et le droit à la santé sexuelle et reproductive font partie de l'ensemble indivisible des droits de l'homme, dans la pratique, les personnes transsexuelles sont forcées de choisir entre eux. Pour comprendre ce scénario, il faut se centrer sur les dimensions eugéniques des politiques en matière de transsexualité, même dans des États où la reconnaissance d'une identité de genre autre que celle attribuée à la naissance n'est pas liée à des accommodements hormonaux ou chirurgicaux. L'«eugénisme passif», concept inventé par James Bowman il y a plus de vingt ans, est fort utile à

Resumen

Este artículo examina cómo el reconocimiento de la identidad de género de personas trans puede tener consecuencias negativas para su salud y derechos reproductivos. En primer lugar, argumenta que, aunque el derecho a la identidad de género y el derecho a la salud sexual y reproductiva son parte de los derechos humanos fundamentales indivisibles, en práctica las personas trans son forzadas a elegir entre ellos. Para entender esta hipótesis es necesario centrarse en las dimensiones eugenésicas de las políticas trans, incluso en estados donde el reconocimiento de una identidad de género distinta a la asignada al nacer no está asociado con compromisos quirúrgicos u hormonales. El concepto de «eugenesia pasiva», acuñado por James Bowman hace más de veinte años, ofrece una clave valiosa en este

cet égard. Deuxièmement, l'article met en évidence certains facteurs qui entravent une approche réussie en matière de santé et de droits reproductifs des personnes transsexuelles. Ces facteurs comprennent: les imageries normatives sur les capacités et les désirs de reproduction des personnes transsexuelles, les représentations de la grossesse et la « féminité », et la forme prise par les politiques sur l'identité dans les mouvements féministes contemporains. L'attention accordée en priorité (sinon exclusivement) à des initiatives pour la légalisation de l'avortement librement consenti, comprise comme un droit des femmes (cis), offre un exemple significatif de ces difficultés. Enfin, l'article plaide en faveur de l'adoption d'une approche de justice reproductive pour travailler sur la santé et les droits sexuels et reproductifs, avançant qu'elle a, parmi d'autres vertus, celle de remettre en question la matrice binaire qui caractérise la pensée occidentale.

sentido. En segundo lugar, el artículo destaca algunos factores que obstaculizan un enfoque exitoso para la salud y los derechos reproductivos de las personas trans. Entre estos factores se encuentran: las representaciones normativas sobre las capacidades y deseos reproductivos de las personas trans, representaciones sobre el embarazo y la “femineidad” y la forma que adoptan las políticas de la identidad en movimientos feministas contemporáneos. La atención prestada de forma prioritaria (si no exclusiva) a iniciativas por la legalización de la interrupción voluntaria del embarazo, entendida como un derecho de mujeres (cis), ofrece un ejemplo significativo de estas dificultades. Por último, el artículo aboga por la adopción de un enfoque de justicia reproductiva en materia de salud y derechos sexuales y reproductivos, señalando que una de sus virtudes es la de cuestionarla matriz binaria que caracteriza el pensamiento occidental.